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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 320

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA

STATEMENT AS TO JURISDICTION

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STATEMENT AS TO JURISDICTION.

Appellants Michigan-Wisconsin Pipe Line Company (Michigan-Wisconsin) and Natural Gas Pipeline Company of America (Natural) submit herewith their statement

particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the judgment of the Supreme Court of Oklahoma in Causes Nos. 35,731 and 35,732, affirming an order of the Corporation Commission of Oklahoma. These appeals involve identical questions decided in one opinion by the state court upon a common record and a single jurisdictional statement is filed. Panhandle Eastern Pipe Line Company, appealing on the same record, is filing a separate jurisdictional statement.

THE OPINION BELOW.

The opinion of the Oklahoma Supreme Court has not yet been reported. Copies of the majority and dissenting opinions are attached hereto as Appendix A.

JURISDICTION.

1. These are appeals from a decision of the Supreme Court of Oklahoma affirming an order of the Corporation Commission of Oklahoma entered under Title 52, Sec. 239, Oklahoma Statutes, 1951, fixing a minimum price at which the residue constituent[1] of natural gas produced from the Guymon-Hugoton Field in Oklahoma shall be sold to interstate pipeline companies after production, gathering and processing of the raw gas has been completed.

2. The Supreme Court of Oklahoma handed down its opinion on April 27, 1954. Appellants' petitions for rehearing were denied on July 13, 1954. Notices of Appeal to this Court were filed by appellants with the Clerk of the Supreme Court of Oklahoma on August [illegible], 1954.

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[1] Residue gas is that portion of raw gas which remains in gaseous form after the raw gas has been processed in a gasoline plant for the extraction of natural gasoline and other hydrocarbons in liquid form.

3. The jurisdiction of this Court upon appeal is conferred by 28 U.S.C. §1257(2). Appellants challenge the validity of the order of the Corporation Commission of Oklahoma, a "statute of a state" within the meaning of that provision, on the ground that, as applied to their activities, it is repugnant to the Constitution and statutes of the United States, and the decision of the highest court of the state was in favor of its validity.

4. Cases believed to sustain the jurisdiction of this Court on appeal include *Williams* v. *Braffy*, 96 U.S. 176, 183; *Lake Erie & Western Ry. Co.* v. *Public Utilities Commission*, 249 U.S. 422; *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U. S. 179, 181.

5. A copy of Order No. 26,09[illegible] of the Corporation Commission of Oklahoma, the "statute" involved within the meaning of 28 U.S.C. §1257(2), is attached hereto as Appendix B. It is not officially reported. Section 1 of that order, which is here in issue, is as follows:

> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

QUESTIONS PRESENTED.

1. Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of the Constitution of the United States (Art. I, Sec. 8, Cl. 3) and the Natural Gas Act (15 U.S.C. 717, et seq.), to fix the price of residue gas sold at the outlet of a gasoline plant to an interstate pipeline company for immediate transportation to markets in other states, or to prohibit the production of natural gas if the price fixed for residue gas obtained therefrom is not obtained.

2. Whether, as applied to Michigan-Wisconsin, the Commission's order fixing the price of residue gas sold in Texas is an attempt to exercise extraterritorial jurisdiction and violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

3. Whether, as applied to appellants, the Commission's order is arbitrary and unreasonable and abrogates private contracts for no public purpose, contrary to the Due Process Clause of the Fourteenth Amendment and the Contract Clause (Art. I, Sec. 10) of the Constitution of the United States.

STATEMENT.

1. The Nature of Appellants' Activities.

Appellants Michigan-Wisconsin and Natural are natural gas companies as defined in the Natural Gas Act, as amended, and operate interstate gas pipeline transportation systems under certificates of public convenience and necessity issued by the Federal Power Commission. The operations of both companies, in so far as the issues here involved (other than the issue relating to the exercise of extraterritorial jurisdiction) are concerned, were recog-

nized by the state court to be identical, and the decision of the state court and the order of the Corporation Commission apply alike to both.[2] Because this Court is familiar with the circumstances under which Michigan-Wisconsin purchases and takes possession of residue gas from Phillips Petroleum Company (Phillips),[3] the facts of that case will be stated and discussed.

Michigan-Wisconsin's interstate pipeline system originates at the outlet of a gasoline plant owned and operated by Phillips in Hansford County, Texas. From that point the line extends through parts of Oklahoma, Kansas, Missouri, Illinois and Indiana to its termini in Michigan and Wisconsin, its principal markets being the Detroit and Milwaukee metropolitan areas. Except for insignificant amounts, all of the gas transported by Michigan-Wisconsin is residue gas purchased from Phillips after the latter has removed the liquid hydrocarbons from the natural gas at its gasoline plant.

The natural gas processed by Phillips at this plant (the residue constituent of which it sells to Michigan-Wisconsin at the outlet of the plant) is produced in the first instance from wells in both Texas and Oklahoma. The gas from all such wells is then gathered together by Phillips through its gathering system and commingled at the inlet of its

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[2] Natural's operations are fully described in its Statement as to Jurisdiction in No. 191 (Oct. Term 1954). Briefly, Natural's system, in part, extends from the outlet of a gasoline plant owned and operated by Panoma Corporation to markets in Iowa, Nebraska, Illinois, Indiana and Wisconsin, its principal market being the Chicago metropolitan area. Under Natural's contract with Panoma, title to the gas produced and gathered by Panoma passes to Natural, and the gas is physically delivered to it, at the outlet of Panoma's gasoline plant.

[3] The identical transaction here involved was before this Court twice last term. *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U.S. 157, and *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672.

gasoline plant in Texas prior to processing. Thus, the residue gas purchased by Michigan-Wisconsin from Phillips in Texas originates in wells located in both Texas and Oklahoma. Michigan-Wisconsin itself produces no gas in Oklahoma, purchases no gas in Oklahoma, and sells no gas in Oklahoma. Its sole properties in Oklahoma consist of its 24-inch pipeline, which cuts across part of the state.

Michigan-Wisconsin acquires such residue gas from Phillips under a contract dated December 11, 1945, and certain amendments thereto. The contract contains provisions dealing with prices and deliveries. In addition, the contract provides that Phillips "dedicates" to the performance of its contract the gas under certain acreage which it owns or controls, a portion of such land lying in Texas and a portion in Oklahoma. By this provision, Phillips agreed to sell to Michigan-Wisconsin all of the residue from gas produced from the leases so dedicated after having removed the liquefiable constituents of the gas produced. The contract also contains the usual provisions requiring the seller to produce, gather and process the natural gas and to deliver the residue, conforming to certain standards of quality, at the outlet of its gasoline plant in Texas. It was stipulated before the Commission that title to the residue gas passes to Michigan-Wisconsin at the point of delivery.

2. The Order Here Involved.

By its order of July 29, 1952 (App. B), the Commission did three things: it (a) increased the minimum price for gas sold at the wellhead from 7¢ per m.c.f. as provided in its order of December 9, 1946 (involved in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179) to 9.8262¢ per m.c.f., an increase of 40%; (b) fixed a minimum price of 9.8262¢ plus the reasonable cost of gathering for gas

sold, without processing, at points remote from the well; and (c) fixed a minimum price of 9.8262¢ per m.c.f. for residue gas—the remaining constituent of natural gas after removal of liquefiable hydrocarbons. Neither Natural nor Michigan-Wisconsin purchases raw gas produced in Oklahoma either at or away from the wellhead. Both companies, however, purchase the *residue* from gas produced in Oklahoma at the outlet of gasoline plants—Michigan-Wisconsin's purchase being made in Texas and Natural's in Oklahoma. Both appellants are therefore affected by the third provision of the Commission's order, which reads:

> "If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

The result of the Commission's order was to raise the price Natural must pay Panoma by 57% above the contract price, an annual increase of $1,108,505, and to require Michigan-Wisconsin to pay Phillips annually $169,672 above its contract price, based on 1951 purchases.

3. The Appeal in the State Court.

Pursuant to the provisions of Oklahoma statutes, appellants filed separate appeals from the Commission's order in the Supreme Court of Oklahoma. In their respective Petitions in Error, both appellants raised the federal questions here involved, contending that the Commission's order imposes an unlawful burden upon and regulation of interstate commerce, in violation of the Commerce Clause of the Federal Constitution, that the order attempts to set the price for the sale of natural gas to a company subject to the Natural Gas Act, contrary to the Federal Constitution, that the Commission's order is arbitrary and unreasonable and in violation of the Due Process

Clause of the Fourteenth Amendment, and that the Commission's order impairs the obligation of contracts contrary to Article I, Section 10 of the Constitution of the United States. Additionally, Michigan-Wisconsin contended that the Commission's order fixing the price at which Phillips must sell gas to Michigan-Wisconsin in Texas is void under the Commerce Clause and under the Fourteenth Amendment as an attempt to exercise extraterritorial jurisdiction. These contentions were also spelled out and argued in detail in briefs filed with the state court and in oral argument.

The fact that the federal questions were adequately and properly raised was recognized by the state court in its opinion (See App. B, p. X, XII, *infra*), while the dissenting opinion specifically adopts the position that the Natural Gas Act and the Commerce Clause foreclose the Corporation Commission from attempting to fix the price at which residue gas must be sold to interstate pipeline companies (See App. B, p. XX, XXI, *infra*). This Court will accept the recognition by the state court that the federal questions were properly raised in that court. *Charleston Federal Savings & Loan Assn.* v. *Alderson*, 324 U.S. 182, 185.

The Supreme Court of Oklahoma, four members dissenting, affirmed the Commission's order. One member of the majority concurred specially, apparently feeling bound under principles of *stare decisis* to follow that court's decision in *Natural Gas Pipeline Company* v. *Panoma Corporation*, 271 P. 2d 354 (which is on appeal to this Court as No. 191, October Term 1954) even though he had dissented in the *Panoma* case. Thus, a *majority* of the members of the Supreme Court of Oklahoma disagree with the application of federal law made by the judgment here appealed.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

1. The Order, as Applied to Appellants, Is Incompatible With the Jurisdiction of the Federal Power Commission Under the Natural Gas Act.

Two closely related questions are raised concerning the power of the Corporation Commission of Oklahoma to fix the price at which Phillips must sell residue gas to Michigan-Wisconsin or Panoma to Natural: (1) is such regulation consistent with the Federal Power Commission's jurisdiction over those sales under the terms of the Natural Gas Act, 15 U.S.C. §717, *et seq.*, and (2) is such regulation permissible under the Commerce Clause of the Constitution even in the absence of statute. Resolution of the first question against the exercise of jurisdiction by the state commission of course makes the second moot.

In *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, decided June 7, 1954, this Court held that Phillips is a "natural gas company" within the meaning of the Natural Gas Act, and that the sale of residue gas by Phillips to Michigan-Wisconsin—*one of the very sales here in issue*—is subject to the jurisdiction of the Federal Power Commission.[4] Nor was this Court unaware that conflicting state regulation existed. As the Court points out, even though there may be state regulation:

> "* * * the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control." 347 U.S. at p. 681.

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[4] The decision of the Court of Appeals for the District of Columbia, *Wisconsin* v. *Federal Power Commission*, 205 F. 2d 706, was called to the attention of the state court in brief and oral argument, and this Court's opinion in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, was transmitted to the state court prior to its decision on rehearing. At no time was either decision referred to by the majority of the state court.

The state court's decision that the state commission could regulate the same sale that is subject to regulation by the Federal Power Commission is thus in direct conflict with this Court's holding that state regulation inconsistent therewith must fall.

The anomaly of the present situation is emphasized by the fact that the Federal Power Commission, on July 16, 1954, issued its Order No. 174 requiring Phillips and other companies affected by this Court's decision to file with the Commission their gas purchase contracts effective June 7, 1954, and prohibiting such companies from making any change in their contract prices effective on that date without filing applications with the Commission.

The direct conflict between the Federal Power Commission's authority over the sales here involved and that asserted by the Oklahoma Corporation Commission is even more clearly demonstrated by a decision of the Federal Power Commission issued July 30, 1954 in Michigan-Wisconsin's rate case, *In the matter of Michigan-Wisconsin Pipe Line Company,* Opinion No. 275. In that case, the Federal Power Commission held that in determining the cost of gas purchased by Michigan-Wisconsin, increased costs attributable to the specific minimum price order of the Oklahoma Corporation Commission here in question would not be allowed, stating:

> "To the extent that a portion of this gas was produced by Phillips, there is no justification for attributing to such volume any increase above the *established contract price* by reason of the Oklahoma minimum well-head price order in question." (pp. 6-7) (Emphasis supplied)

Thus, the Federal Power Commission has specifically held that Phillips may not lawfully charge Michigan-Wisconsin

more than the contract price for residue gas, the state commission's order to the contrary notwithstanding. A clearer conflict between state and federal regulation is difficult to imagine. This Court has specifically held, moreover, that by enacting the Natural Gas Act, Congress "pre-empted the regulatory powers over the transportation and sale of natural gas in interstate commerce." *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U.S. 456, 466. The state court's decision simply ignores that conclusion.

2. The Order, as Applied to Appellants, Is Violative of the Commerce Clause.

Even apart from the Natural Gas Act, the Commission's order fixing the price at which producer-processors of gas must sell residue gas to interstate pipeline companies was beyond its jurisdiction. There is no question but that the sales by Phillips to Michigan-Wisconsin and by Panoma to Natural at the outlets of the gasoline plants are sales in interstate commerce. Phillips conceded this fact in proceedings before the Federal Power Commission, and both this Court (347 U.S. at 677) and the Court of Appeals (205 F. 2d at 710) approved this concession.

If, then, the sales involved are sales in interstate commerce, may a state regulate the prices at which such sales may be made? The Oklahoma court held that it may. The Court of Appeals, in the decision in *Wisconsin* v. *Federal Power Commission, supra,* held categorically that it may not, stating:

> "The Commission finds that the sales involved here are sales in interstate commerce of natural gas for resale. That finding is not disputed. It follows that no state can regulate these sales. * * *" (Ibid 710)

Indeed, the fact that a state is forbidden to regulate sales of this kind by this Court's decisions in *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298, and *Public Utilities Commission* v. *Attleboro Steam & Electric Company*, 273 U.S. 83, was one of the motivations for enactment of the Natural Gas Act. See *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. at 682-684 and authorities cited.

Appellees and the court below relied upon this Court's decision in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, as authority for their position. In that case this Court upheld an order of the Corporation Commission of Oklahoma setting a minimum price for natural (raw unprocessed) gas sold *at the wellhead*, but in doing so the Court carefully limited its decision to the facts presented by the record, *Id.* at p. 189. That record showed that the gas purchased at the wellhead by Cities Service was subsequently gathered together by that company, the liquefiable components extracted and the residue then moved to a concentration point in Oklahoma where it was commingled with gas coming from other fields. *Only then* did a portion of the residue move in interstate commerce. It was under these circumstances—a sale made prior to processing and assembling for interstate transportation—that this Court held the sale to be subject to state price regulation.

In its opinion in the *Cities Service* case this Court relied upon the principles stated in *Parker* v. *Brown*, 317 U.S. 341, 361, in which state regulation of the price of raisins was upheld under the Commerce Clause on the ground that, since the state regulation there involved occurred "before they are processed and packed preparatory to interstate sale and shipment," the regulation was primarily of local concern. Here, however, the sale which the state commission seeks to regulate occurs *at the very mouth of the interstate pipeline*. See *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157. At the time of the sale the gas is

rushing into the inlet of appellants' pipelines for immediate and continuous transportation interstate. No further processing remains to be done; no further gathering or assembling lies ahead. Under the very terms of the *Cities Service* case and *Parker* v. *Brown*, therefore, regulation of the prices at which appellants purchase residue gas is of national, rather than local concern, and therefore forbidden to the states.

This national interest in freedom of the residue gas purchased by appellants from state price fixing regulations is further reflected in the fact that 90% of the gas produced in the Guymon-Hugoton Field is consumed in states other than Oklahoma, and *all* the residue gas purchased by appellants is so consumed. Thus, the facts here are exactly the reverse of the situation presented by *Milk Control Board* v. *Eisenberg*, 306 U.S. 346, cited in the *Cities Service* case. In that case it was considered of controlling significance that only 10% of the milk produced in Pennsylvania was transported from the state. The Court stated that there was a comparatively large field only remotely affecting and *wholly* unrelated to interstate commerce within which the statute operated and, therefore, that the effect of the law on interstate commerce was incidental. But here, 90% of the gas produced in the Guymon-Hugoton Field is consumed outside the state. The effect on interstate commerce is direct and immediate. The principal burden of the order necessarily falls on consumers in other states.

Moreover, the order here involved, judged by its operation and effect, is clearly *aimed* at interstate commerce. Regulation of price is effective only in the Guymon-Hugoton Field from which 90% of the gas produced is consumed in other states. The Corporation Commission has not attempted price fixing in other fields of the state from which only 10% of the gas produced is consumed in other states,

Oklahoma from this field, although a fluctuating figure, about equals the cost of gathering and the cost of processing; that in order for Phillips to obtain the equivalent of 9.8262 cents per thousand cubic feet at the wellhead for the gas which it produces it must receive 9.8262 cents for the residue gas after processing; that if Phillips does not obtain such price for residue gas but is forced to sell it at the price called for by its contracts with Panhandle and Michigan-Wisconsin such a loss would result that Phillips would be forced to close down its producing, gathering, and processing operations; that there is no other market for this gas; that if Phillips were forced to construct another processing plant inside the borders of Oklahoma the unit cost would be much higher than it is under the present arrangement whereby the same plants can process both Oklahoma and Texas gas; that the total cost of gathering and processing when deducted from the value received for the liquid hydrocarbons extracted leaves only a minute fraction of a cent for earning rate on the investment; that out of 1000 wells currently producing in this field gas is sold at the wellhead from only 141 of them and the remaining gas produced in this field by all companies is sold at points elsewhere than at the wellhead.

Cities Service Gas Company, Northern Natural Gas Company, and Natural Gas Company introduced stipulations outlining their respective operations and showing that they purchased both raw gas at the wellhead and processed gas and sold most of such gas in interstate commerce. The various contracts and amendments or modifications thereof between Phillips, Panhandle Eastern, and Michigan-Wisconsin were introduced in evidence.

The Commission entered its findings to the effect that since the date of its last order in 1947 fixing the minimum price of gas at the wellhead at 7 cents commodity prices

90% of the production being consumed in the state. The regulation, by its necessary operation, is a means of gaining a benefit for local producers "by throwing the attendant burdens on those without the state."[5]

One contention made by appellees in the state court deserves brief comment. They there asserted that the Commission's order does not violate the Commerce Clause because it does not "fix" the minimum price at which the interstate sale must be made but simply provides that "no gas shall be produced" at any well in the field unless it is then sold at a price no lower than that fixed by the order. Thus appellees argued that, while the Commission might not be able directly to set the price at which appellants must purchase gas, the Commission may place an embargo against production conditional upon the seller's obtaining that price.

Obviously the impact of the order, judged by its necessary operation and effect, is on the sale. When the raw gas is produced, gathered and processed those activities are lawful unless the *subsequent* sale of the residue is made at a price less than that fixed by the order. If sold at a lower price, the production that had theretofore been lawful becomes unlawful. Thus, while the prohibition is against production, that prohibition is nothing more than a sanction to enforce payment of the price fixed by the Commission for interstate sales. Constitutional guaranties may not be evaded in this manner. *Foster Fountain Packing Co.* v. *Haydel,* 278 U.S. 1; *Bailey* v. *Alabama,* 219 U.S. 219, 244.

It should be noted, in this connection, that the Federal Power Commission, by its Order No. 174 issued July 16, 1954, has forbidden Phillips and other companies which sell gas to interstate pipeline companies from suspending any

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[5] *So. Carolina State Highway Dept.* v. *Barnwell,* 303 U.S. 177, 185 (fn. 2), 185-186.

in general and the use value of gas had so increased that the sale of gas from said field at any price less than 9.8262 cents measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch causes both physical and economic waste; that the taking of gas at the price now prevalent causes a less return to royalty owners and the State of Oklahoma, results in inequitable taking from the common source of supply and in discrimination against various producers in the field; that only a small portion of the gas produced in the field is actually sold at the wellhead; that much of the gas is gathered and liquid hydrocarbons extracted, the residue being sold at the conclusion of processing; that the value received by the processor for the liquid hydrocarbons extracted does not exceed the cost of gathering and processing the gas and represents a valuable service to the purchaser; that to realize a price equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead such producer and processor must receive for such residue gas a price of not less than 9.8262 cents; that to prevent waste, to protect correlative rights, and insure the greatest ultimate recovery of gas from the common reservoir gas should not be permitted to be taken from the structures of said field at a price less than 9.8262 cents; that a minimum price order cannot be made fully effective unless the manner in which producers of processed gas shall obtain such price is provided; and entered its order that no gas shall be produced from said field at a price less than 9.8262 cents per thousand cubic feet if sold at the wellhead or on the lease or drilling unit or a price equivalent to 9.8262 cents if sold off the lease or drilling unit or otherwise utilized; that the minimum price of gas sold at the conclusion of gathering but without extraction of hydrocarbons shall be 9.8262 cents plus the reasonable cost of gathering; and that processed or residue gas shall be sold at a price of not less than 9.8262 cents.

service provided by such sellers on June 7, 1954, without the approval of the Federal Power Commission. Thus, any attempt by Oklahoma to enforce its prohibition of production would squarely contravene the Federal Power Commission's order. Under the Natural Gas Act as under the Commerce Clause itself, therefore, a state may not attempt to prohibit or embargo the production of gas as a means of enforcing payment of a state-fixed price for interstate sales.

3. The State Court's Attempt to Rewrite the Gas Purchase Contracts Cannot Be Sustained.

In what can only be characterized as an attempt to evade this Court's decisions construing the Natural Gas Act and the Commerce Clause, the Supreme Court of Oklahoma apparently construed the contracts as not providing for sales of residue gas at the outlets of gasoline plants after production, gathering and processing have been completed (as this Court held in the Phillips case) but as providing for sales of the residue constituent of the gas while it is still a part of the raw natural gas in the underground formations, before production, before gathering and before processing.[6] This astounding conclusion, not urged by any of the parties before the Corporation Commission, is in conflict with unambiguous provisions of the contracts, with stipulations made by the Corporation Commission itself, and with the interpretation given the same contracts by this Court, by the Court of Appeals for the District of Columbia and by the Federal Power Commission.

The gas purchase contracts here in issue are not ambiguous as to where title passes. In Natural's contract with Panoma it is provided that:

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[6] If, in fact, that were the proper interpretation of the contracts, the Commission's order would not even be applicable to such sales. The order does not purport to regulate the price of gas sold in the ground but applies only to residue gas when sold "*after* processing during or upon the conclusion of gathering."

The contentions of the various plaintiffs in error may be broadly grouped under three general propositions, each with several subheads and arguments which will be discussed in their proper place. These three propositions are: (1) that the order of the Commission is not predicated upon adequate findings and is not supported by the evidence; (2) that the order purports to regulate interstate commerce and imposes an unlawful embargo and restriction thereon; (3) the Commission has no power or authority, express or implied, to fix the minimum price at which residue gas, only one of the constituents of raw gas, shall be sold.

Under the first general proposition plaintiffs in error allege that the findings of the Commission are inadequate as basic findings of fact to support the conclusions expressed in the order as findings in that the Commission's finding as to the existence of physical waste is a final conclusion, not a basic fact finding; that the finding of physical waste is not supported by the evidence; that the finding of economic waste is not supported by the evidence; that the Commission cannot fix the price of commodity sold in interstate commerce merely to increase the profits of the sellers of such commodity; that the findings that under existing price there is loss to the royalty owners and the State do not justify the order; the order goes beyond the necessities of the case; the finding that the price now prevalent results in inequitable taking from the common source of supply is without support of adequate findings and evidence; the finding that the prevalent price results in discrimination against various producers is unsupported by findings of basic facts and the evidence; the finding that the production of gas is in excess of market demand is without foundation in findings of basic facts or the evidence; a mere finding that the order is for the prevention of waste, the protection of correlative rights, and in the interest of the state is not

> "A metering station to be installed by Natural * * * shall be located near the outlet of said plants *at which point title to the gas shall pass to Natural,* * * *" (Emphasis supplied.)

Michigan-Wisconsin's contract with Phillips provides that "The point of delivery of all gas delivered hereunder shall be at the outlet of the meter station * * *" and further provides that "Seller warrants unto Buyer the title to all gas delivered hereunder." Moreover, it was stipulated that:

> "Title to said gas so produced by Phillips does not pass unto Michigan-Wisconsin until it is delivered at the meter of Michigan-Wisconsin in Hansford County, Texas."

It is significant, furthermore, that never during the course of the long litigation culminating in this Court's decision in the *Phillips* case did Phillips or any other party so much as suggest that it sold residue gas at any point other than at the outlet of its gasoline plant. The opinion of the Federal Power Commission, 10 F.P.C. 246, the opinion of the Court of Appeals, 205 F. 2d 706, and this Court's opinion, 347 U.S. 672, all construe Phillips' contracts with Michigan-Wisconsin and Panhandle Eastern as sales at the outlets of gasoline plants. As this Court stated:

> "After processing is completed, the gas flows from the processing plant through an outlet pipe, of varying lengths up to a few hundred feet, to a delivery point where the gas is sold and delivered to an interstate pipeline company." (347 U.S. at 675.)

The one circumstance seized upon by the state court for its remarkable interpretation of the contracts was that Phillips and Panoma have "dedicated" certain of their leases to the fulfillment of their obligations under the contracts. Contract dedications are very common provisions which are

sufficient basis for the exercise of jurisdiction; the order purports to fix the earnings of gatherers and processors of gas which is beyond the scope of the Commission's jurisdiction; the order is a special order; there is no substantial evidence to sustain the finding that the minimum price for residue gas should be identical with the wellhead price for raw natural gas.

A review of the evidence outlined above demonstrates that none of these contentions are well founded. There is substantial evidence to the effect that the prevalent price of raw gas in this field (seven cents per thousand cubic feet as fixed by previous order) will not, under present economic conditions prevailing, such as cost of labor and materials, permit the drilling of wells in fringe areas, resulting in non-development of the field, migration of gas to wells in production to the loss of landowners in fringe areas, and incomplete exhaustion of the gas-bearing structures, all to the loss of landowners, producers, and the State of Oklahoma generally. Such facts constitute both physical and economic waste and amply justify the Commission's order on that factor. Certainly such facts clearly show inequitable taking from the common source of supply, irreparable harm to correlative rights of owners, loss to royalty owners, and loss to the state and are sufficient to sustain the interest of the state in correcting such abuses. This is a regulatory order based upon the interest of the State in conserving its natural resources; it is not an order designed merely to increase the earning of producers and processors. Such an order is a proper exercise of the state's police power. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279, affirmed 340 U.S. 179, 71 S. Ct. 215, 95 L. ed. 190. That it may have such effect is a mere incident.

The evidence that the value of the liquid hydocarbons extracted just about balances the cost of gathering and

required by the Federal Power Commission before it will authorize construction of a gas pipeline. They constitute an assurance that the pipeline has an adequate gas supply. The dedications simply prevent a sale of the dedicated gas to other purchasers. It had never been suggested, prior to the Oklahoma court's decision in the *Panoma* case (No. 191 in this Court), that the dedication itself constituted a sale of residue gas in the ground.

When substantial constitutional rights are asserted, this Court will exercise its own judgment as to both the facts and the law. When the holdings of a state court rest on an interpretation of a contract, this Court will itself interpret the contract to see if the decision "rests on a fair or substantial basis." *Broad River Power Co.* v. *South Carolina*, 281 U.S. 537, 540. And, while this Court will be inclined to accept a reasonable interpretation of a contract by a state court, that interpretation will be rejected if "manifestly wrong." *Southern Wisconsin Ry. Co.* v. *Madison*, 240 U.S. 457, 461; *New York Transit Co.* v. *New York*, 303 U.S. 573, 593. This case is a singularly appropriate one for application of that doctrine.

4. The Commission's Order Contravenes the Due Process and Contract Clauses of the Constitution of the United States.

The order of the Corporation Commission, apart from the impact of the Commerce Clause, violates the Due Process Clause of the Fourteenth Amendment in two respects: first, it is extraterritorial in its application to Michigan-Wisconsin, and second, its increase of the minimum price from 7¢ to 9.8262¢ per m.c.f. for natural gas and its requirement that appellants pay the same amount for the residue constituent thereof are arbitrary and unreasonable in the extreme. Furthermore, it abrogates contracts for no public purpose, but for the private benefit of the integrated producer-processors such as Phillips and Panoma.

(a) The order is extraterritorial in application.

As has been stated, the sale of residue gas by Phillips to Michigan-Wisconsin takes place, not in Oklahoma, but in Texas. Thus, the Oklahoma Corporation Commission seeks to extend its power to fix prices beyond the borders of the state. This, under recognized concepts of jurisdiction, it cannot do. *New York Life Ins. Co.* v. *Head*, 234 U.S. 149; *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430, 440.

Baldwin v. *Seelig*, 294 U.S. 511 presented an analogous situation. In that case New York attempted to prevent the sale within that state of milk purchased in Vermont unless the price paid to milk producers in Vermont was up to the minimum set by New York law. The Supreme Court quickly set at rest the question here presented. Mr. Justice Cardozo, speaking for the Court, said:

> "New York has no power to project its legislation into Vermont by regulating the price to be paid in that state for milk acquired there. So much is not disputed. New York is equally without power to prohibit the introduction within her territory of milk of wholesome quality acquired in Vermont, whether at high prices or at low ones. This again is not disputed." (294 U.S. at p. 521.)

A situation identical with that here presented was involved in *De Korte* v. *Du Mond*, 76 N.Y.S. 2d 750, appeal dismissed 298 N.Y. 695, 82 N.E. 2d 588, where New York's attempt to regulate the price of milk produced in New York but sold in Pennsylvania was held invalid. Cf. *Milk Control Board* v. *Eisenberg*, 306 U.S. 346 at 352.

(b) The order is arbitrary and unreasonable.

The Commission's order, as applied to appellants, violates the Due Process Clause of the Fourteenth Amendment in two other respects: (1) the increase of minimum prices from 7¢ to 9.8262¢ per m.c.f. is supported by nothing in the

record other than the pleas of royalty owners and producers to increase their receipts, and (2) the requirement that appellants pay the same price (9.8262¢) for the residue constituent of natural gas as is paid for the raw gas itself at the wellhead is arbitrary and unreasonable.

The order purports to be adopted for the prevention of waste. But there is no evidence as to the existence of physical waste of gas in any substantial amount. The only "waste" claimed to exist is the gas which escapes in the normal and routine drilling and "blowing" (cleaning) of gas wells, and it was undisputed that the quantities so blown to the air through these routine operations are insignificant.

The only claim that "economic" waste exists rests on the argument that in interstate markets served by appellants and other pipelines (such as Kansas City, Omaha, Chicago and Detroit), gas is sold to consumers at prices below the prices at which so-called "competitive" fuels (coal, oil, gasoline, etc.) are sold, based on B.t.u. equivalents. Whatever merit that argument may have for the consideration of those who purchase fuels in such markets, the fact, if true, does not mean that those producers who sell their gas at arm's length are guilty of committing economic waste.

In fact, the petition to increase the minimum price of gas was filed by a group of royalty owners, who paraded to the stand to complain that they were not receiving as much for their gas as they thought they should. References in the record to physical and "economic" waste are the thinnest facade for an attempt to increase the return to Oklahoma citizens at the expense of consumers of gas in other states.[7]

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[7] This is highlighted by the fact that the Commission has fixed minimum prices for gas only in the Guymon-Hugoton Field of Oklahoma, from which all but a fraction of the gas goes to other states. No such price-fixing has been adopted in other gas fields, from which gas is used principally in Oklahoma. The regulation is thus directly aimed at interstate commerce and void for that reason. *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177.

Similarly, the Commission's action in fixing the price of residue gas at 9.8262¢ per m.c.f., the same price to be paid at the wellhead for raw gas, is wholly unreasonable.

(c) The order impairs the obligation of contracts.

Finally, the Commission's order results in the abrogation of contracts to the great private advantage of the producers and processors of natural gas but to no discernible public advantage, thus violating Article I, Section 10 of the federal Constitution. By the Commission's order Panoma receives an annual windfall of $1,108,505 on its sales to Natural alone, an increase over the contract price of 57%, while Phillips receives an annual windfall of $169,672 from Michigan-Wisconsin. These contracts were entered into in the utmost good faith by sellers and buyers experienced in the gas business. It is not contended that the contracts were not advantageous from the standpoint of both seller and purchaser, yet the price has now been raised far above that upon which the parties agreed and made their plans.

The Commission's order does not affect in the slightest degree the methods of extracting gas from the ground or the amounts that may be extracted by any producer. Its effect upon conservation of gas, which is the "public purpose" supposedly served by the order, is therefore nil. It does have the drastic effect, however, of transferring from the pockets of consumers of gas to those of a few producers, millions of dollars annually. Wholesale abrogation of contracts merely to benefit certain parties to the contracts can hardly be considered a public purpose in itself.

Although contract obligations must yield to the *proper* exercise of the police power, and vested rights do not inhibit the proper exertion of that power, yet (a) the power must be exercised for an end which is, in fact, public; (b) the means adopted must be reasonably adopted to the accom-

plishment of that end; and (c) the exertion must not be arbitrary or oppressive. *Treigle* v. *Acme Homestead Assn.*, 297 U.S. 189, 197. The order here involved, as applied to appellants, does not meet that test.

CONCLUSION.

Appellants respectfully suggest that these appeals, and one filed by Panhandle Eastern Pipe Line Company in a companion case, bring before this Court federal questions under the Constitution that are far-reaching and important, both in terms of legal principles and of practical impact upon the consumers of gas throughout the nation; and that enough has been said to demonstrate that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

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APPENDIX A

IN THE

SUPREME COURT OF THE STATE OF OKLAHOMA

NATURAL GAS PIPELINE COMPANY OF AMERICA, *Plaintiff in Error,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*	No. 35,731
MICHIGAN-WISCONSIN PIPE LINE COMPANY, *Plaintiff in Error,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*	No. 35,732
PANHANDLE EASTERN PIPE LINE COMPANY, *Plaintiff in Error,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*	No. 35,734

SYLLABUS

1. Under the regulatory power of the Corporation Commission for conservation purposes it can fix a minimum price which must be obtained for natural gas as a condition precedent to the taking of natural gas or any component part thereof from the structures. Such an order, even though most of the gas so taken from the structures will eventually be sold outside this state, does not place an embargo or unlawful restriction upon

interstate commerce, unlawfully impair the obligation of contracts or violate due process. The regulation is imposed before any movement in interstate commerce occurs.

2. Having fixed a minimum price as a condition precedent to the taking of natural gas from the structures, in furtherance of the power to regulate such taking for conservation purposes the Commission may require a producer who does not sell raw gas at the wellhead or one who processes such raw gas for the purpose of breaking it into component parts before delivery to obtain therefor a price equivalent to the fixed minimum price of raw gas at the wellhead. This is necessary in order to prevent discrimination and ensure that all producers will be regulated alike. In doing this it may prescribe a formula or method by which such producer may obtain such equivalent price. It is only necessary that such formula or method so established be reasonable and practically effective to carry out the purpose for which it is made.

3. Record examined and held: That the order of the Corporation Commission is based upon basic findings of fact and is supported by substantial evidence.

Certain mineral owners made application to have a minimum price fixed for gas produced in the Guymon-Hugoton natural gas field. Certain producers in said field protested such price fixing. From order of the Commission fixing the price of raw gas at the wellhead, the price of raw gas sold off the lease, and the price of residue gas after processing operations three producers, Panhandle Eastern Pipeline Company, Michigan-Wisconsin Pipeline Company, and Natural Gas Pipeline Company of America appeal. The three appeals are here consolidated.

AFFIRMED.

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ARNOLD, J.:

Certain mineral owners in Texas County, Oklahoma, filed an application before the Corporation Commission for an order determining the minimum price at which gas produced from the Guymon-Hugoton field may be first purchased or sold. Certain producers and purchasers of gas from said field filed their protests and responses. From the Commission's order fixing minimum price at which such gas may be sold Natural Gas Pipeline Company, Michigan-Wisconsin Pipe Line Company and Panhandle Eastern Pipeline Company have filed their separate appeals, here consolidated.

On behalf of the applicant mineral owners the evidence reasonably tends to show that the Corporation Commission by its order No. 19514 issued effective February 1, 1947, fixed the minimum price at which gas may be produced and taken from the structure in this field at 7¢ per thousand cubic feet; that since that date the price of all other industrial fuels has substantially increased; that comparing the other industrial fuels in most common use, such as coal, residual, crude oil, kerosene, and gasoline with gas on an energy content basis the fuel source cost of natural gas is about one third that of coal (the lowest in price per energy content unit of all the other industrial fuels) and the other fuels increase in cost per energy content unit to the highest, gasoline, which is almost fourteen times greater; that natural gas since 1938 has been lower in price in comparison to its heat energy content than any other fuel because gas has not been on a competitive market while the other fuels are and have been; that in 1950 natural gas supplied 20.94% of the total of mineral energy supplied, produced, and used as fuel in the United States and received only 5.16% of the total dollar income for all energies at their source; that in order to have the same

price differential between gas and other fuels as existed in 1947 when the former order of the Commission was entered the price of natural gas would have to be set at 12.64¢ per thousand cubic feet that to compare favorably with other industrial fuels the price should be 25 or 30 cents per 1000 m.c.f.; that increasing the price of gas as taken from the structure would tend to conserve gas and prevent physical waste in that the higher price would allow wells in fringe areas of the field to be drilled and operate at a profit whereas if a price increase is not given such wells cannot economically and will not be drilled resulting in non-development of the field, loss to the owners in such fringe areas and damage to their rights in the common source of supply; that better and more expensive methods of production would be economically feasible which would tend to conserve gas and eliminate the necessity of blowing out the wells to clean them; that the entire Hugoton field is a single reservoir extending from the Texas panhandle across Texas County and into Kansas; that if the fringe wells are not drilled the gas will migrate to existing wells, causing loss to the fringe owners; that the higher price is necessary while marketing facilities are available and if fringe wells were not drilled until the rest of the field was abandoned very little gas would be left in the reservoir and there would be no marketing facilities available therefor; that about 99% of the gas produced in the Guymon-Hugoton field is transported out of the state of Oklahoma; that the land owner who owns a quarter section of land gets approximately $1 per day on the average well royalty; that the field as a whole is producing more gas than it did five years ago but the individual wells are producing less; that gas of the same quality is sold by different producers in this field at prices varying from the 7¢ minimum now in effect to 9.95781¢; that none of the mineral owners were consulted as to the price they

would receive for their gas and that they are dissatisfied with the prices they are receiving and want a uniform price throughout the field; that since 1946 there has been a tremendous increase in the demand for natural gas as a fuel and the costs of production have likewise materially increased; that since the 7¢ minimum was fixed several contracts for gas have been negotiated at a price of 9.8¢ per thousand cubic feet; that to protect the interest of the State of Oklahoma a price for gas in Oklahoma should be fixed which would produce the maximum revenue consistent with the policy of maintaining the markets; that a price of 9.8262¢ would not affect the market, would allow thin acreage to be developed and produced preventing migration and allowing full development of the field, thus protecting the correlative rights of the owners.

Over the objection of other producer respondents in the hearing Phillips Petroleum Company was allowed to introduce evidence which reasonably tends to show that in the Guymon-Hugoton field it is primarily a producer of gas from its own wells and leases; that it does not sell its gas at the wellhead but, under commitment of long term contracts with Michigan-Wisconsin Pipeline Company and Panhandle Eastern Pipeline Company it gathers the gas which it produces in its own gathering lines, moves the gas to its two processing plants, one in Hansford County and the other in Sherman County, Texas, about a mile and a quarter south of the Oklahoma line, and there removes liquid hydrocarbons and delivers the dry or residue gas to said companies; that in addition to the gas which it produces Phillips has contracts with certain other producers by which it purchases gas at their wellheads which gas it gathers processes and sells in the same manner as the gas from its own wells and leases; that the production from its own leases is 14% of the total production of the field and the gas it purchases is 4.4% of the field total,

making a total of gas which it produces or purchases of 18.4% of the field total; that the geographical location of the processing plants across the state line is a mere incident, they being so located because the site is more centrally located in respect to Phillips' gathering operations in both Texas and Oklahoma; that the value of the liquid hydrocarbons extracted from the raw gas by Phillips in these plants varies with market conditions as does the cost of gathering the gas; that in the process of gathering and extraction some of the gas is used for fuel purposes and some is lost through shrinkage; that after allowing depreciation to date Phillips has invested in the Hansford and Sherman plants and the gathering systems serving them in excess of 19 million dollars; that all of the gas produced and purchased by Phillips in this field is sold after the extraction of liquid hydrocarbons as residue gas elsewhere than at the wellhead; that the acreage from which it produces and purchases gas is dedicated for the life of the production to the performance of its contracts with Panhandle and Michigan-Wisconsin; that after processing at these plants at Hansford and Sherman the residue gas is delivered into the interstate pipelines of these two companies; that the contracts with both Panhandle and Michigan-Wisconsin provide in great detail as to how the gas shall be processed and the constituents and heat energy content of the residue gas delivered to them; that besides Phillips only Panoma and Plains Natural Gas Company produce, gather, and process their own gas in this field and sell it in interstate commerce; that Phillips is the only company in the field that both buys gas at the wellhead for processing in addition to processing its own gas; that the gathering and processing of the gas produced in Oklahoma is part of one continuous overall production; that the value of the products extracted from the gas in

processing the raw gas is uncontradicted. Certainly such processing constitutes a valuable service to the purchaser. The contracts introduced in evidence are very precise as to exactly what constituents shall remain in the residue gas contracted for. To have any regulation at all, to insure that all gas produced from the structures in this field shall be sold at the same minimum price it was necessary to fix the price of residue gas and the evidence is substantial to show that such price must be the same as that of raw gas to attain this end. See *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 71 S. Ct. 221, 95 L. ed. 204.

The findings of the Commission are supported by basic facts and the order of the Commission is based on substantial evidence.

Under the second and third broad groups of contentions plaintiffs in error claim that the order fixing the price of residue gas places a burden upon interstate commerce; that such residue gas is dedicated and destined for interstate movement even before the production of the natural gas of which such residue gas is a constituent; that there is a steady, uninterrupted flow from the wells to the gathering system through the processing plant into the pipeline systems and ending at markets in states outside Oklahoma; that such order was not made in any economic interest but for the interest of those producers who also process gas before delivery, and thus imposes an embargo and unlawful regulation on interstate commerce, is arbitrary and discriminatory; the order constitutes an unwarranted and unnecessary invasion of property rights under the guise of the exercise of the police power and deprives plaintiffs in error of their property without due process of law; the order impairs the obligation of contracts, takes plaintiffs in error's property for private use; there is no local interest which outweighs

the national interest in burdening gas sold interstate with state price-fixing regulations; the Commission seeks by this order to exercise extraterritorial jurisdiction; the price fixed for residue gas is not supported by substantial evidence. The order of the Commission fixing a price of 7 cents per thousand cubic feet at the wellhead in the Guymon-Hugoton field was involved in the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co., supra, Phillips Petroleum Co.* v. *Oklahoma, supra,* and *Natural Gas Pipeline Co. of America* v. *Panoma Corporation, et al.,* not yet officially reported, 24 Oklahoma Bar Journal 1393, ...P. 2d .... The same field and the same parties as here were involved and the same arguments were made and the same authorities cited in support thereof as here. These cases are decisive of the point that the Commission under its regulatory power for conservation purposes has the power to fix a minimum price as a condition precedent to the taking of natural gas from the structures; that such minimum price does not place an embargo or unlawful restriction upon interstate commerce, unlawfully impair the obligations of contracts, or violate due process. And as said in the *Phillips Petroleum Company* case, *supra,* by the United States Supreme Court, the Commission may order a producer such as Phillips who does not sell raw gas at the wellhead to obtain the equivalent of the fixed minimum price when the gas is sold after processing, because the Commission must be able to regulate the operations of all producers or there is little point in regulating any.

The only new question presented here is: may the Commission establish a method or formula by which it can be ascertained whether a producer who does not sell raw gas at the wellhead obtains *the* equivalent of the fixed minimum price of raw gas as taken from the structures? And if so and to implement the obtaining of such equivalent price can

the Commission add to the cost of raw gas which is not processed before sale but is sold off the lease the reasonable cost of gathering, or in case the raw gas is processed for the removal of liquid hydrocarbons before actual delivery to the purchaser, fix the price of the residue gas being only one constituent of the raw gas, so delivered?

Appellants concede that under their contracts the residue gas which they purchase is dedicated to the fulfillment of such contracts even before the production of the natural gas of which such residue gas is a constituent is produced and that such gas can be sold to no one else. This, of course, amounts to a sale of the residue gas in place; the sale is made before any movement of any kind starts and before anything in the nature of interstate commerce occurs, regardless of the acts required to be performed before the residue gas is separated from other constituents of the raw gas and regardless of the point of delivery to the purchaser. As said in *Natural Gas Co.* v. *Panoma, supra,* the processing of the raw gas amounts to a manufacturing operation and represents a valuable service to the purchaser. Under their contracts purchasers are able to buy a manufactured product for which they have a ready sale without necessitating large investment in processing equipment to make the raw product salable.

It seems self-evident and axiomatic that if the Commission has the power to regulate by fixing minimum prices it has the power to establish the formula and method by which it may be ascertained and determined whether all producers in the field are obtaining such minimum price, as it is their inescapable duty to do. It is only necessary that a formula or method so established be reasonable and practically effective to carry out the purpose for which it is made. Under the evidence here it is clearly shown that the market for liquid hydrocarbons is a competitive and fluctuating one. It

would seem highly impractical to attempt to fix a price for any one or all of such liquid hydrocarbons. It is also shown that by the very nature of natural gas its market is fixed and stable and amounts almost to a monopoly in a limited way; that because of the great expense and investment necessary for adequate distributing lines for moving the gas to the ultimate user a seller of residue gas must have a dedicated and guaranteed source of supply and franchise for more or less exclusive sale. Such requirements of course, keep the sale of residue natural gas as a fuel off a competitive market to a great extent.

The evidence shows that the average return over a long period from the sale of the liquid hydrocarbons extracted from the raw gas just about balances the cost of gathering and processing; sometimes the sale amounts to more and quite often amounts to less. As a practical matter it seems that the only feasible method to carry out the purpose of the Commission in regulating the taking of natural gas from the structures by all producers, regardless of their particular mode of operation, would be to fix the price of the residue gas, which is the only fairly stable constituent of raw gas.

All parties concede that under the cases cited above the Commission can fix the price of gas as taken from the structure. If it can fix the price of the whole it can fix the price of all of the parts constituting the whole. If it is not practically feasible to fix the price of all the parts constituting the whole it can fix the price of that constituent which can be controlled, provided it does it in a reasonable manner and so that the overall purpose is carried out. Under the evidence it seems that the Commission established the only formula which it could establish that would be workable and not be discriminatory or arbitrary. Under the formula established the producer who sells raw gas without process-

ing off the lease obtains the minimum price plus the reasonable cost of gathering; mere arithmetical computation shows that only by adding the cost of gathering to the minimum price can such a producer obtain the equivalent of such minimum price at the wellhead. The same thing is true as to residue gas. As it is shown that the liquid hydrocarbons counterbalance the cost of gathering and processing (which as above stated represents a valuable service to the purchaser) the only practical way to ensure that a producer who processes raw gas before actual delivery thereof to the purchaser will obtain the equivalent price of raw gas at the well head is to fix the price of residue gas as the same price of raw gas. As a practical matter this allows the purchaser of residue gas to receive a manufactured and processed product for which he has a sale at the same price he would have to pay for the raw product. If, for example, a furniture dealer could obtain finished furniture for sale at the same price he could obtained unfinished lumber he would think he had a rare bargain. The point of delivery of the finished product is a mere incident. The sale is made before anything in the nature of interstate commerce occurs. The order thus has no extraterritorial effect.

We think the Commission has the power to fix the price of residue gas as a necessary incident, under the facts shown in this record, to the regulation of the sale of raw gas as taken from the structures, and the formula and method established is both reasonable and practical.

The order of the Commission is based upon basic findings of fact and is supported by substantial evidence.

AFFIRMED.

JOHNSON VCJ. and WELCH, CORN and ARNOLD, JJ., concur.
WILLIAMS, J. concurs by reason of *stare decisis*.
HALLEY, CJ. and DAVISON, O'NEAL and BLACKBIRD, JJ., dissent.

Nos. 35731, 35732 and 35734 (Considered as Consolidated).

NATURAL GAS PIPELINE COMPANY OF AMERICA vs. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY.

BLACKBIRD, J., Dissenting:

I cannot agree with the views expressed in the majority opinion.

The price-fixing part of the Order involved herein is as follows:

> "IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, as follows:
>
> 1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, *or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.*"

It will be seen from the above that the Order purports to fix the price of gas at three different stages, namely:

(1) Raw gas at the wellhead;

(2) Raw gas "sold off the lease or drilling unit or otherwise utilized" including that sold at the conclusion of gathering and before processing, and

(3) Residue gas (the residue of raw gas *after* it has been processed).

As to (1) above, there can be no question as to the validity and constitutionality of the Order in view of the decision of this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279, and the decision of the United States Supreme Court on that case's appeal. See *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, 71 S. Ct. 215, 95 L. Ed. 190. However, as to (2) and (3) I think the Order is invalid and unconstitutional.

Each of the respondent companies is a "Natural Gas Company" as that term is defined in the *Natural Gas Act*, 52 Statutes 821, 15 U.S.C.A., Secs. 717, *et seq.* All are foreign corporations operating gas pipe line transportation systems traversing state lines and transporting residue gas derived by processing raw gas. Substantially all of this residue gas is transported through Respondent's interstate pipe lines and sold as fuel in various northern states. Such gas transportation is performed under authority of certificates of public convenience and necessity issued to said Respondents by the Federal Power Commission and the selling of that gas in those states is likewise under the exclusive jurisdiction of that body. When the raw gasoline arrives at Phillips' two Texas plants for processing, it has already been commingled in Phillips' Texas-Oklahoma pipe line system with other raw gas produced in Texas. Michigan-Wisconsin's purchases from Phillips are made under a contract specifying a certain price therefor, entered into by and between said parties on December 11, 1945, with amendments later made.

The Panhandle Company's pipe line system extends directly from producing areas in Oklahoma, Texas and Kansas to Missouri and other states north and east, where the gas it transports is sold at wholesale, both to utility companies for resale and to industries in those states for their own use. Part of this gas is derived from Panhandle's own wells in Oklahoma, and part is purchased from other producers.

All of the respondents maintain that Order No. 26096 is an unconstitutional assertion of power by the Corporation Commission in so far as it purports to fix the price of residue gas, and raw gas, after it has left the wellhead and lease or drilling unit where it is produced and enters an interstate pipe line system for resale in other states. Only Natural argues that the Order as a whole, including the part applicable to wellhead gas, is invalid or not justified by the evidence. As I consider the Order separable as applied to the gas in its three classifications above named, and, as I note that under the stipulated facts, Natural is not a purchaser of wellhead or raw gas, if Order No. 26096 had been reversed only as it purports to apply to gas other than at the wellhead, Natural would then have no rights impinged, as the price it is paying Panoma for residue gas under its present contract presumably would not be directly affected or disturbed. In that situation, the questions Natural raises as to the wellhead gas price fixing feature of the Order would become merely abstract or hypothetical ones, and not subject to review on specifications of error by this party not shown to be then affected by it. See *Patterson* v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 P. 2d 83; *Emrick* v. *State Highway Commission*, 147 Okla. 252, 296 P. 412; *Swan* v. *Home Savings & State Bank*, 148 Okla. 42, 297 P. 250; *In re Stewart Bros.*, 53 Okla. 153, 155 P. 1124; 2 Am. Jur., "Appeal and Error,"

Sec. 152. I will therefore reserve opinion on that part of Natural's argument and consider now only its argument directed at the "non-wellhead" portions of the Order, together with those of the other protestants, which on those phases are substantially the same.

As the order purports to fix the price of raw gas at the conclusion of its gathering beyond Oklahoma's territorial limits, or after it has gotten into an interstate pipe line, and purport to fix the price of residue gas, respondents say:

> (1) The findings and Order of the Commission are not supported by substantial, competent evidence;
>
> (2) The Order is beyond the constitutional and statutory power of the Commission and, as applied to protestants, violates,
>
> (a) Sections 7, 15, 23, and 24 of Article II of the Oklahoma Constitution, and Section 10, Article I, and the Fourteenth Amendment of the U. S. Constitution, by taking their property and valuable property rights without due process of law, without just compensation, and without a justifying public purpose or reciprocity of advantage, and denies them equal protection of the law,
>
> (b) and violates Section 8, Article I of the U.S. Constitution by placing an unlawful embargo on interstate commerce.

In so far as Order No. 26096 purports to apply to the gas after it is received into interstate pipe lines and is sold for immediate transportation and resale in other states, I think its invalidity is settled by *State of Wisconsin* v. *Federal Power Commission* (U.S. Ct. App. D. C.) 205 Fed. 2d 706. The opinion promulgated therein demonstrates, with the ample support of the previous U. S. Supreme Court decisions cited therein, that gas sales, in no

respect (affecting their interstate character) different from those in the present case, are interstate commerce, and cannot be regulated by any state; and that the exemption of "production or gathering of gas" contained in the Natural Gas Act, *supra,* does not extend to sales made after production and gathering have been completed. There is no direct conflict between this decision and previous decisions of our own Court. There is little, if any, disagreement among the litigants herein as to the principles of constitutional law that apply. The only conflict or joinder of issues in their argument seems to center around their divergent interpretations of Order No. 26096. Thus they agree that under the weight of authority, including *Cities Service Oil & Gas Co.* v. *Peerless Oil & Gas. Co., supra,* extension of the state's police power to price-fixing can be constitutionally justified only on the basis of a public purpose or protection of the public interest, such as gas conservation. But proponents of the Order seek to interpret and justify it as a conservation measure. Therefore, let us analyze the present order as tested by the principles laid down by our Court in the Cities Service Case. The material ones, as expressed in the syllabus of our opinion, are as follows:

> "1. The grant of power to the Corporation Commission under 52 O.S. 1941, § 239 to regulate the *taking of natural gas from a common source of supply* 'so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom,' by necessary implication includes the power to employ such means as may be *reasonably necessary* to the accomplishment of the declared purposes and includes the power to fix a price consideration in the *taking* of gas when found necessary to the attainment of such ends.
>
> 2. The provisions of 52 O.S. 1941, § 233, give the Corporation Commission authority to fix the price at

which natural gas may be *produced and taken from the field,* under the circumstances and in the manner therein stated.

3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an *unnecessary and unwarranted interference with individual liberty.* A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.

* * *

5. The commerce clause of the Federal Constitution does not preclude the state in the protection of local interests from fixing a uniform minimum price consideration *as a condition of the taking* of natural gas from a common reservoir because a producer therefrom will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed *before* the operation of interstate commerce occurs." (Emphasis added).

As shown in the above quotation, our upholding of the gas price-fixing Order involved in that case, was based, at least in part, upon the following considerations:

(1) That the Order was a *reasonably necessary* means to the accomplishment of the declared purpose of the Corporation Commission's statutory grant of power to prevent waste and protect correlative rights in a common source of gas supply;

(2) That price control is unconstitutional only when it is an *unnecessary and unwarranted interference with* individual liberty;

(3) That such an order does not violate the Commerce Clause of the Federal Constitution when it fixes a uniform minimum price as a condition of *taking the gas from a common reservoir* and takes effect *before* the gas gets into interstate commerce.

When weighed in the light of the above tests, I think the order in question must be found wanting. After examining the provisions of the Order purporting to fix the price of residue and raw gas away from the well or field or at the conclusion of its gathering, and weighing their effect and operation, as applied to the situation here and the rights of all concerned, I do not see how they can be justified as a conservation measure. In the 14th paragraph of its finding, the Commission found:

> "That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants."

This is obviously an incomplete sentence and finding, but if it was intended to say by it that fixing a price for residue gas and raw gas away from the well or field is reasonably necessary to the effective and indiscriminate operation of the order, I do not agree. It was not shown that any of the wells in the Guymon-Hugoton Field are without gauges at their wellheads or that it is necessary to fix the price at any other point in order to accomplish the only legally justifiable purposes of such an order. There is no substantial evidence in this case to detract from the conclusion that the purposes of conservation are served when the taking from the gas sand is regulated at the wellhead by fixing the price right there—and before it gets into interstate pipe lines and is commingled with gas from other states, as was shown to occur before some of it arrives at Phillips' plants in Texas. Of course, Phillips' evidence was calculated to show that it and other gatherers and processors similarly situated had a problem of determining whether or not they were receiving for residue gas the equivalent of the Commission-fixed price for raw gas at the wellhead. This same

problem is said to have been presented to the United States Supreme Court in *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 71 S. Ct. 221, 95 L. Ed. 204, as evidenced by the following excerpt from that Court's opinion:

> "Phillips also relies heavily on the contention that the orders are unreasonably vague. In substance, this argument is nothing more than that the determination by an integrated company of proceeds realized from gas at the wellhead involves complicated problems in cost accounting. These problems are common to a host of valid regulations. There is nothing to indicate that Phillips will be penalized for reasonable and good faith efforts to solve them."

In both of the above cases and the *Cities Service Co.* case, *supra*, it was demonstrated that an order fixing a wellhead price applies to all and discriminates against none. While this may not be the only way to prevent waste and preserve correlative rights by price-fixing, it appears to be the best plan that has come before this court. Contrary to the impression the majority opinion seems to leave, the *Phillips* case, *supra*, furnishes it no support. While it is true that the Court therein recognized that the Commission must be able to fix the price for all *producers* or there is no point in trying to fix the price for any, it rejected Phillips' claim that a wellhead price could not be uniformly and indiscriminately enforced. And it must be borne in mind that the Orders there involved attempted no more than to fix the price of raw gas at the wellhead, as distinguished from a residue or by-product processed *in another state and there* sold in interstate commerce. It was specifically stated in that opinion: "Appellant does not argue that the orders violate the Commerce Clause, art. 1, §8, cl. 3."

The price fixed in the objectionable portions of the order here presented would not operate indiscriminately. True,

the order might readily solve Phillips' accounting problems. If completely effective, it might even furnish Phillips legal justification and exoneration for not living up to its contracts for the sale of residue gas made in prior years and specifying prices which now may seem unfavorable to it, yet it would discriminate against those who do not have the pipe line and processing facilities Phillips possesses. Granted that residue gas, or raw gas with gasoline and hydrocarbons removed, is more valuable for fuel purposes and to fuel consumers and distributors than the gas as it comes from the well in its natural state and that such gas should command a better price from such purchasers (being processed and ready for their use) these facts are immaterial, or at least of minor or secondary importance, to the primary question: Is it necessary for the Commission to guarantee to a processor its cost of gathering, or in the instance of residue gas, that cost, plus the cost of processing, in order to accomplish conservation of the State's natural gas resources? If so, this was not established by the evidence despite the statement to the contrary contained in the majority opinion. No attempt was made to show that gas from the Guymon-Hugoton Field would not have a market or that economic or physical waste of such resource would result if gatherers of gas in the field were not thus guaranteed their cost of gathering over and above the wellhead price. In this connection, I challenge any and all to show me proof in the present record that Phillips is actually losing money on its operations, or (as said in the majority opinion) "that if Phillips does not obtain" the price fixed by the order in question "for residue gas but is forced to sell it at the price called for by its contracts with Panhandle and Michigan-Wisconsin such a loss would result that Phillips would be forced to close down its producing, gathering and processing operations; * * *." As hereinbe-

fore noted, Phillips attempted to show by its interdepartmental system of cost accounting, and the Commission found, that the "value" of the liquid hydrocarbons extracted from the raw gas does not exceed the cost of processing and gathering it, "including a reasonable allowance for depreciation and return on investment. * * *" But I say that even if, on the basis of applicable law and substantial evidence, such a guaranteed profit to such processors might conceivably be justified as a conservation measure, it is discriminatory, and the discrimination is in favor of those situated as is Phillips. By guaranteeing such companies the same minimum price for residue gas as raw or wellhead gas, the order gives them either: *one* highly marketable product (residue gas) free of cost for gathering and processing (if such cost is charged to its processing or refining department), or *more* marketable products free of such costs, such as gasoline, carbon black and other hydrocarbons (if the gathering and processing is charged against the residue gas as a part of the cost of marketing it). Other purchasers buying gas at the wellhead would not have the advantage of this "two-way guarantee," but after purchasing the gas there, are "on their own" as regards paying their costs of gathering and marketing it. Another and second discrimination which is more patent on the face of the Order is that it purports to require the producer or lessee who sells gas after it is "gathered," but before it is processed, to obtain for it, in addition to the wellhead (and residue price) of 9.8262 cents per thousand, an extra added premium which the Order calls: "the reasonable cost of gathering." Aside from the controversies such an order will engender over the question of when or at what point gas can be said to be "gathered" within the meaning of that term as used in the order, this provision discriminates in favor of those owners of mineral rights who derive their

producing royalty income from lessees or producers who sell gas at the conclusion of gathering, and against those who derive their income from producers in the other two catagories, that is, (1) Those who sell nothing but raw gas at the wellhead, and (2) Those who make no sale of gas until after it is processed and becomes residue gas. The majority opinion reflects that there is some wastage and shrinkage between the wellhead and the gauges at the processing plants. How will the royalty owners under leases owned by Phillips get paid for as many cubic feet of gas as the royalty owner under leases producing gas that is sold at the wellhead? Will these royalty owners get paid on the basis of the number of cubic feet of raw gas that pass through the gauges at the wellhead, or will they be paid on the basis of the number of feet of residue gas that pass through the gauges at the processing plant? To me, the above considerations not only demonstrate that the order in question is discriminatory in more than one respect, but also, that by it, the Commission is about to launch an unlawful and dangerous invasion of the field of private enterprise, or "individual liberty" (as expressed in the *Cities Service* case, supra) without the justification of necessity for conservation purposes. If this Body's fixing of the price of residue gas can be justified on the grounds of conservation, as different a product and as far removed as it is from the natural gas that is the resource to be conserved, then I see no reason why that Body cannot also fix the price of gasoline, carbon black, and other products or commodities refined and/or manufactured from natural gas.

The record reveals that before the last of the protracted series of hearings in this case the Commission, through its Chairman and its attorney, expressed grave doubt, or at least serious misgivings, as to whether a price-fixing order for anything but raw gas at the wellhead could be legally

or constitutionally justified as a conservation measure. This makes it doubly surprising and somewhat imponderable to find that after delaying its decision several days after the last hearing, the Commission, on the basis of the weak and biased evidence presented by no other company than Phillips, signed substantially the same kind and form of order that Phillips' attorneys had previously drawn and exhibited to the Commission earlier in the hearings.

On the basis of the foregoing views, it is my conclusion that Order No. 26096 is valid in so far as it sets a price for natural gas at the wellhead, but is invalid in its other price-fixing aspects. Accordingly, I think the Order should have been affirmed in part and reversed in part. To that extent, and for the foregoing reasons, I dissent to the opinion of the majority.

APPENDIX B

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an Order Determining the Minimum Price at Which Gas Produced from the Guymon-Hugoton Field May Be First Purchased or Sold.	Cause CD No. 3628 Order No. 26096

REPORT OF THE COMMISSION.

This cause came on for hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 20th and 21st days of February, 1952, at 10 o'clock, a.m., at which time all Commissioners were present and the case was heard.

The case was then continued to various dates and was finally heard on July 8th and 9th, 1952, and at the conclusion of the testimony on July 9th all parties announced that they had rested, the case was closed, and the matter was taken under advisement.

At all hearings the following appearances were entered: Rizley, Tryon and Sweet, E. H. Lange and C. H. Hinton appeared for Panhandle Eastern Pipe Line Company; R. M. Williams, Kenneth Heady and Cecil C. Hamilton appeared for Phillips Petroleum Company; Mark Adams appeared for Northern Natural Gas Company, C. C. Kuhne, Coleman Hayes, D. H. Culton, Warren T. Spies, B. M. Britain appeared for Natural Gas Pipeline Company; T. Mur-

ray Robinson and Dale & Dale appeared for applicant; L. T. Cramer appeared for Office of Price Stabilization; Joe Rolston and R. R. McCracken appeared for Cities Service Gas Company; Floyd Green, Conservation Attorney and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

Now, on this the 29th day of July, 1952, the Commission being in executive session, the matter comes on for further discussion and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the extent hereinafter set out and therefore finds as follows:

FINDINGS.

1. That this is an application of certain mineral owners in Texas County, Oklahoma, for an order determining the minimum price at which gas in the Guymon-Hugoton Field may be first purchased or sold.

2. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law; that the cause was regularly set for hearing, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

3. That various interested parties have filed responses to the application and answers, some of which were filed during the course of the proceedings and some of which by leave of the Commission were filed since the proceedings were closed.

4. That Mr. L. T. Cramer of the Office of Price Stabiliza-

tion appeared and stated the position of that Federal Agency in respect to the application.

5. That under date of December 9th, 1946, the Commission issued its Order No. 19514, in Cause CD No. 1954, fixing the minimum price of 7¢ per thousand cubic feet of natural gas measured at a pressure base of 14.65 pounds absolute pressure per square inch for all gas taken out of the structures or formations in the Guymon-Hugoton Field, Texas County, Oklahoma; that said order was appealed to the Supreme Court of Oklahoma and the Supreme Court of the United States, both of which courts upheld the order of this Commission fixing said price and upheld the jurisdiction of the Corporation Commission to fix the price of gas in this particular field for the purpose of conservation and the protection of correlative rights.

6. That since the Commission issued its Order No. 19514, the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch, constitutes and causes waste, both physical and economic.

7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevalent in said field results in and causes:

a. Economic waste of a great natural resource, to-wit: natural gas;

b. Actual physical waste of natural gas;

c. Loss to the royalty owners in said field;

d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;

e. Inequitable taking of natural gas from the common source of supply involved.

f. Discrimination against various producers in the field.

8. That the production of natural gas in the Guymon-Hugoton Gas Field is in excess of the market demand.

9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that the price of 7¢ for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

10. That the representative of the Office of Price Administration stated in the record that a wellhead price for gas in said field of 9.8262¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch will not violate the orders of the Office of Price Administration.

11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable serv-

ice to the purchaser, in that said processing conditions said gas for pipe line transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial investments and incur substantial expenses in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment; and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F.

12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field, but that residue gas having less than 950 BTU per cubic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such residue gas should be in the proportion that the BTU content of such gas bears to 950 BTU per cubic foot.

13. That for the purpose of preventing waste, economic

and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton Field, at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants.

ORDER.

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of

gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic feet.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29th day of July, 1952.

CORPORATION COMMISSION OF OKLAHOMA

S/REFORD BOND, *Chairman*
S/RAY O. WEEMS, *Vice-Chairman*
S/RAY C. JONES, *Commissioner*

ATTEST:

S/TOM MCMURRAY
Secretary